

Second Amendment Challenges to Federal Firearms Prosecutions after *Rahimi*

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Today's Topics:

1. How we got here
2. 18 U.S.C. § 922(g)(1)
3. Other Provisions of 18 U.S.C. § 922



Today's Topics - How we got here

“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”



How we got here

Heller

Bruen

Rahimi



Today's Topics

18 U.S.C. § 922(g)(1)



18 U.S.C. § 922(g)(1)

“Felon-in-possession ban”

“It shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year” to possess any firearm or ammunition.



18 U.S.C. § 922(g)(1)

Frequently charged—and frequently challenged

Post-*Rahimi* WL search for “Second Amendment” & “922(g)(1)” produces over 500 results



18 U.S.C. § 922(g)(1)

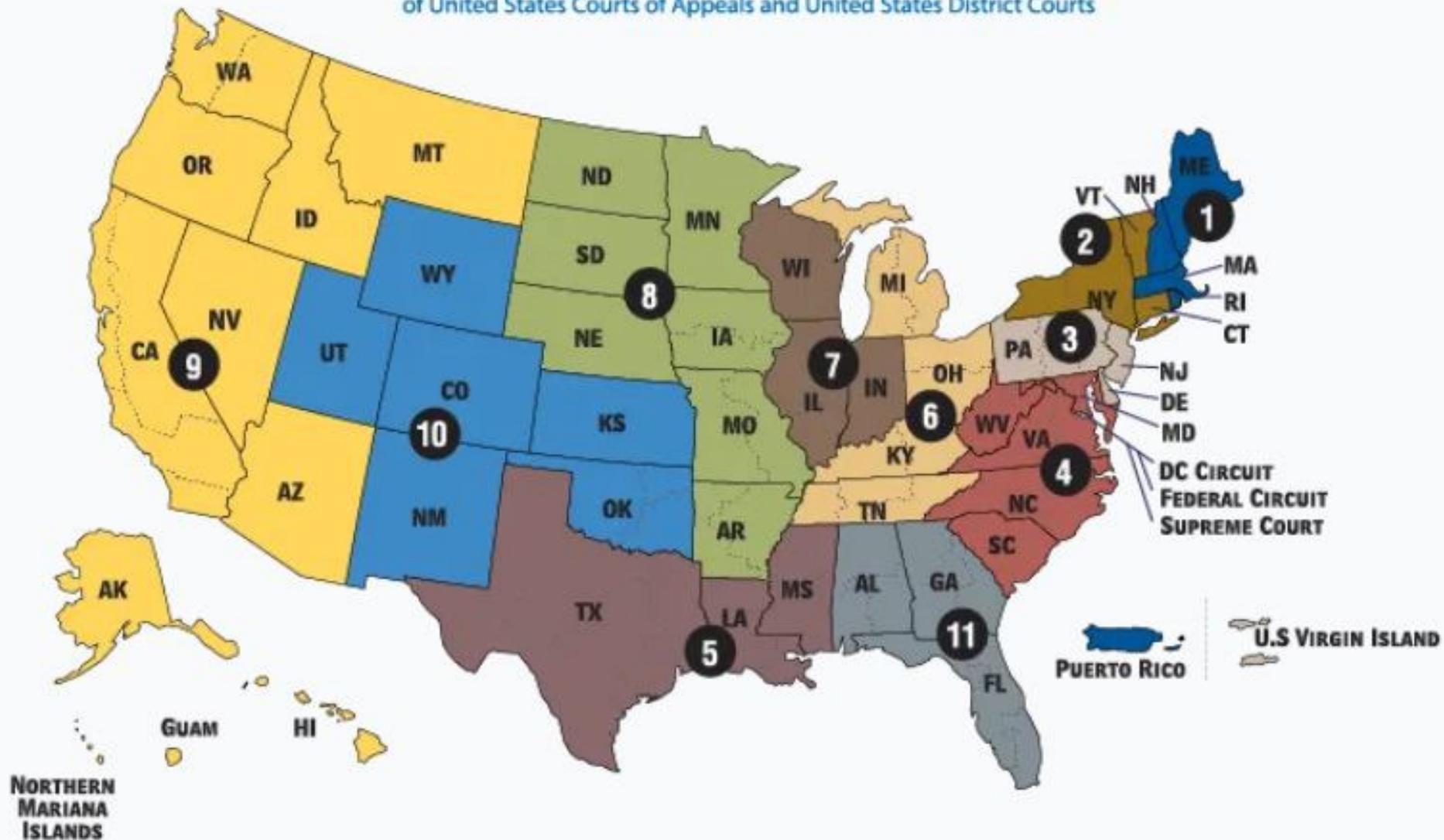
The DOJ's Position: Constitutional in **all** applications

The Circuits are deeply divided over as-applied challenges (but so far all have rejected facial challenges)



Geographic Boundaries

of United States Courts of Appeals and United States District Courts



18 U.S.C. § 922(g)(1)



Fifth Circuit's Approach

United States v. Diaz, 116 F.4th 458 (5th Cir. 2024)

&

United States v. Bullock, 123 F.4th 183 (5th Cir. 2024)

18 U.S.C. § 922(g)(1)

Diaz

Theft is relevantly similar to horse theft, which was punished harshly at the Founding.



18 U.S.C. § 922(g)(1)

Bullock

The government can disarm the “dangerous.”



18 U.S.C. § 922(g)(1)

Other Circuits' Approaches

(Slim) majority say Constitutional in *all* applications. *E.g.*, 4th, 8th, and 11th Circuits (though reasoning differs).



18 U.S.C. § 922(g)(1)

Other Circuits' Approaches

“[T]here is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1).”

United States v. Jackson, 110 F.4th 1120, 1126 (8th Cir. 2024).



18 U.S.C. § 922(g)(1)



6th Circuit's "Dangerousness" Test

“This historical study reveals that governments in England and colonial America long disarmed groups that they deemed to be dangerous.” District Judges must “entertain” as-applied challenges to determine if a defendant is “dangerous.” “In determining whether an individual has met his burden to demonstrate that he is not dangerous, and thus falls outside of Section 922(g)(1)’s constitutionally permissible scope, courts—much like officials of old—must focus on each individual’s specific characteristics.”

United States v. Williams, 113 F.4th 637, 657 (6th Cir. 2024).

18 U.S.C. § 922(g)(1)



Other Circuits' Approaches

Third Circuit's "*Range*" test

Section 922(g)(1) is unconstitutional as applied to Bryan Range, who was convicted many years ago of felony-level false statement to get food stamps.

See Range v. Att'y Gen., ___ F.4th ___, 2024 WL 5199447 (3d Cir. Dec. 23, 2024) (en banc)

18 U.S.C. § 922(g)(1)

In sum, the Circuits are deeply divided, meaning the Supreme Court will likely resolve the split.



Today's Topics – Other § 922 provisions



Other Provisions of 18 U.S.C. § 922

- (g)(2) fugitive from justice
- (g)(3) unlawful user or addicted to any controlled substance
- (g)(4) who has been adjudicated as a mental defective or committed to a mental institution
- (g)(5) illegal alien
- (g)(6) dishonorable discharge
- (g)(7) renounces citizenship
- (g)(8) [*Rahimi* provision] subject to certain domestic violence restraining orders
- (g)(9) convicted of a misdemeanor crime of domestic violence



Other Provisions of 18 U.S.C. § 922

18 U.S.C. § 922(g)(3)

“The short of it is that our history and tradition may support some limits on a *presently* intoxicated person’s right to carry a weapon . . . , but they do not support disarming a sober person based solely on past substance usage.”

United States v. Connelly, 117 F.4th 269 (5th Cir. 2024)



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